



STATE OF INDIANA  
OFFICE OF THE GOVERNOR  
State House, Second Floor  
Indianapolis, Indiana 46204

Mitchell E. Daniels, Jr.  
Governor

To: Phillis Johnson-Ball  
STB Finance Docket No. 35087  
Surface Transportation Board  
396 E Street, S.W.  
Washington DC 20423-0001  
Date: September 10, 2008

COMMENTS OF INDIANA GOVERNOR  
MITCHELL E. DANIELS JR.

Attached please find my comments with respect to the Draft Environmental Impact Statement (DEIS) in the matter of the Canadian National Railway Company and Grand Trunk Corporation (CN or the Applicants) application (the Application) seeking Surface Transportation Board (STB) approval of CN's Application to acquire control of the EJ&E West Company (Transaction) referenced at Surface Transportation Board Finance Docket No. 35087. These comments, any supplements thereto, and any comments offered by this Office at any public meeting on the DEIS in this matter are to be read together, included in the official record and considered by the STB as a single set of comments. Thank you.

**Comment #1.** I urge the STB to withhold approval of the Application and not permit this Transaction to proceed until CN has adequately addressed my specific comments described herein as well as the concerns of the citizens of Northwest Indiana, who will bear a disproportionately heavy burden in terms of safety, congestion, environmental impacts and noise should the STB approve this Transaction in its current form.

**Comment #2.** Failure of Proposed Mitigation Measures. The voluntary mitigation measures proposed by CN and reported in the DEIS are inadequate and lack any element of real commitment. With respect to both Indiana safety impacts and Indiana vehicle congestion/delay, CN offers and the DEIS reports no specific mitigation measures. This not only deprives Indiana of an adequate tool to examine the document and make informed policy and public safety decisions with respect to the Transaction, but the omission of specific safety and vehicle congestion/delay mitigation measures fails to meet the very criteria described in the DEIS "Executive Summary" which states in relevant part:

To that end, the Draft EIS describes the affected environment; evaluates and compares the direct, indirect, and cumulative environmental effects of the Proposed Action and alternatives; and identifies mitigation measures that could eliminate or lessen the expected environmental impacts." (emphasis added)

**Comment #3. Needed Mitigation Measures and Commitments.** Unfortunately, the history of negotiations between CN and Northwest Indiana, while productive in some respects, is too often characterized by delay and avoidance on the part of CN. Without defined commitments and deadlines as a condition of STB approval of this Transaction, Indiana has no guarantee and little assurance that suggested voluntary mitigation measures referenced in the DEIS will ever be implemented. I urge as a condition of STB approval of the Application or of the Transaction the following:

a) **Safety Risk Mitigation.** The STB should require CN to meet with the Indiana Department of Transportation, which has jurisdiction over rail crossings in Indiana (Indiana Code 8-3-1-1 *et seq*), within a reasonable time (such time to be determined by INDOT) after the closing of the Transaction (should this Transaction occur) and agree to a reasonable timetable (consistent with transportation and other needs of the relevant local communities, such timetable ultimately to be determined by INDOT) for installation, at CN's expense (including but not limited to design, engineering and installation costs), of at least the 11 grade crossing protections described in the chart on Page 4 of these comments, entitled "Grade Crossing Mitigation Improvements". Installation of the rail crossing improvements is, in each situation, a rational safety countermeasure to offset the immediate increase in risk resulting directly from this Transaction.

b) **Vehicle Congestion/Delay Mitigation at Broad Street in Griffith and US 20/5th Avenue in Gary.** The grade crossing safety improvement measures described herein, while important safety improvements, do nothing to mitigate increased vehicle congestion/delay caused by this Transaction. While all crossings on the EJ&E line in Dyer, Schererville, Griffith and Gary with increased train traffic will experience increased vehicle congestion and delay (as well as increased safety risk), Broad Street and US 20/5<sup>th</sup> Avenue, in particular, will see critically heavy impacts, as outlined in the DEIS. CN should mitigate for those key vehicle delay impacts and fully fund those mitigation measures regardless of whether they are grade separations or other viable measures.

**Comment #4. CN Should Pay for Mitigation.** Indiana taxpayers or local communities should not have to carry the financial costs (as well as bear the congestion burdens and safety risks) caused by this Transaction. I urge the STB to withhold its approval of this Application and of any element of this Transaction until CN commits to the specific mitigation measures described herein (and such other safety and congestion mitigation measures as are described in the DEIS, the Final Environmental Impact Statement or as INDOT, the communities and CN may agree) and commits to work with the communities impacted and the Indiana Department of Transportation according to a definite timeline with specific deliverables rather than saddle Northwest Indiana with more congestion, more delay, increased safety risks and no real commitment to sufficient funding to lessen those burdens.

**Comment #5. Failure to Present of Usable Information and Data.** While this final comment is more technical in nature than preceding comments, it goes to the very heart of what NEPA requires and Environmental Impact Statements should provide. This DEIS fails to consider and identify in a meaningful and usable manner the specific safety and vehicle delay/congestion impacts of this Transaction on Northwest Indiana.

a) Failure to Separate Illinois and Indiana Data. The DEIS does not adequately separate and distinguish Illinois safety and vehicle congestion/delay impacts from those in Indiana.

b) Failure to Separate Internal Indiana Data. Equally troubling, the DEIS does not separate and distinguish safety and vehicle congestion/delay impacts internally in Indiana, between those at CN crossings and those at EJ&E crossings.

c) The communities of Northwest Indiana need and deserve the ability to understand negative safety and congestion consequences specific to Indiana, not aggregated with Illinois data or mixed with other internal Indiana data, and subsequently stated as averages or overall impacts.

**CONCLUSION:**

I urge the STB not to approve this Application or permit any element of the Transaction to proceed until the Applicant, which stands to benefit from the Transaction, has committed to mitigate, at its own expense, the safety and congestion impacts caused by this Transaction. I further urge the STB not to approve the Application or permit any element of the Transaction to proceed until the citizens of Northwest Indiana and the rest of the State of Indiana are presented clear and usable descriptions of the rail/highway crossing safety impacts and vehicle congestion/delay impacts, specific to Indiana, caused by this Transaction.

*M E Daniel, Jr.*

(See "Grade Crossing Mitigation Improvements" chart on Page 4)

### GRADE CROSSING MITIGATION IMPROVEMENTS

DOT Crossing No.	Railroad	County	City	Street	Existing Warning Device	Proposed Improvement
260661J	EJE	LAKE	GRIFFITH	LAKE ST	Cross bucks plus Stop Signs	Install Flashing Lights, Gates and Overhead Cantilever
260662R	EJE	LAKE	GRIFFITH	MILLER ST	Cross bucks plus Stop Signs	Install Flashing Lights, Gates and Overhead Cantilever
260672W	EJE	LAKE	GARY	9TH AVE	Flashing Lights only	Install Gates plus Overhead Cantilever
260701E	EJE	LAKE	EAST CHICAGO	CLINE AVE RAMP	Flashing Lights only	Install Gates plus Overhead Cantilever
260652K	EJE	LAKE	DYER	LAKE ST	Flashing Lights plus Gates only	Add Overhead Cantilever
260655F	EJE	LAKE	SCHERERVILLE	AIRPORT RD	Flashing Lights plus Gates only	Add Overhead Cantilever
260659H	EJE	LAKE	GRIFFITH	MAIN ST	Flashing Lights plus Gates	Add Overhead Cantilever
260663X	EJE	LAKE	GRIFFITH	ELM ST	Flashing Lights plus Gates only	Add Overhead Cantilever
260670H	EJE	LAKE	GARY	25TH AVE	Flashing Lights plus Gates only	Add Overhead Cantilever
230082T	EJE	LAKE	GRIFFITH	BROAD ST	Flashing Lights plus Gates only	Replace existing lights and gates with Four Quadrant Gate System
260673D	EJE	LAKE	GARY	5TH AVE	Flashing Lights plus Gates	Replace existing lights and gates with Four Quadrant Gate System